

OCA 88-3586
27 October 1988

OCA FILE

LEG

MEMORANDUM FOR: Deputy Director of Administration
Director of Finance
Director of Logistics
Director of Personnel
Director of Training

FROM: Office of Congressional Affairs

SUBJECT: Congress Passes Technical Corrections
(H.R. 4333)

1. During the final hours of the 100th Congress, both the House and Senate approved the Conferees Report on the Tax Reform-Technical Corrections Act and sent the bill to the President for signature. There were four provisions in either the House or Senate version which were of concern or of interest to the DA.

2. No provision was included to repeal the 10% penalty tax for withdrawal of lump sum retirement contributions prior to age 55. Senator Mansuaga failed in his efforts to introduce this change into the Senate bill.

3. Section 1015 (f) exempts the Agency from disclosing sensitive contracts (Copy attached).

4. Section 4001 restores the provision for excluding from gross income amounts paid by an employer for educational assistance (copy attached). The Conferees adopted the Senate amendment which restores the exclusion retroactively to 1 January 1988 but extends the exclusion only through 31 December 1988. The dollar limit of the exclusion remains at \$5,250. OGC is currently preparing a position paper on the impact of the provisions on Agency training and tuition assistance programs.

5. Section 8003 provides relief from the windfall benefits provisions contained in previous social security law (copy attached). No longer will Federal employees have to have 30 years of service to avoid the public pension offset. Rather, the penalty will be reduced based on a sliding scale depending on the years of coverage.

cc: D/EB&S/OP
OGC-
D/OCA
OCA/LEG
Comptroller

ADMINISTRATIVE/INTERNAL USE ONLY

October 21, 1988

CONGRESSIONAL RECORD—HOUSE

APPOINTMENT AS MEMBERS OF THE ADVISORY COMMITTEE OF THE WHITE HOUSE CONFERENCE ON LIBRARY AND INFORMATION SERVICES

The SPEAKER. Pursuant to the provisions of section 5(a)(2) of Public Law 100-382, the chair appoints the following members on the part of the House to the advisory committee of the White House Conference on Library and Information Services:

From the House of Representatives: Mr. FORD of Michigan; Mr. WILLIAMS of Montana; Mr. OWENS of New York; and

Mr. Nelwyn Murphy, of Booneville, MI; and Mrs. Virginia G. Young, of Columbia, MI.

APPOINTMENT AS MEMBER TO THE NATIONAL COMMISSION ON CHILDREN

The SPEAKER. Pursuant to the provisions of section 1139 of the Social Security Act, as amended by section 9136 of Public Law 100-203, the chair appoints on the part of the House the following member to the National Commission on Children to fill the existing vacancy thereon: Section B: Individuals who are elected or appointed public officials: Mr. Raymond L. Flynn, Mayor, Boston, MA.

RECESS

The SPEAKER. Are there Members who seek recognition for 1 minute?

If not, the House will stand in recess for 15 minutes.

Accordingly (at 10 o'clock and 6 minutes p.m.) the House stood in recess.

□ 1023

AFTER RECESS

The recess having expired, the House was called to order by the Speaker at 10 o'clock and 35 minutes p.m.

AUTHORIZING PRINTING OF "THE UNITED STATES SENATE HISTORICAL ALMANAC"

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate concurrent resolution (S. Con. Res. 146) to authorize the printing of the Senator BOB DOLE's series of "Senate Bicentennial Minutes," and ask for its immediate consideration.

The Clerk read the title of the Senate concurrent resolution.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

Mr. FRENZEL. Mr. Speaker, reserving the right to object, and I shall not object, this is a resolution to authorize the printing by the Senate of some of the historical material presented over the past 2 years by Senator DOLE in the Senate.

Previously the House, as a matter of comity, as this is, passed a similar resolution for the brilliant utterances of the majority leader. This is for the minority leader. It is a routine matter of comity.

Mr. Speaker, I yield to the distinguished gentleman from Illinois (Mr. ANNUNZIO), chairman of the House Administration Committee, for his explanation.

Mr. ANNUNZIO. Mr. Speaker, I thank my distinguished colleague, the gentleman from Minnesota, for yielding. As always, the gentleman is correct.

Mr. FRENZEL. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 146

Whereas the Senate of the United States in 1989 will commemorate its two hundredth anniversary; and

Whereas the Senate has determined that the series of "Senate Bicentennial Minutes", which Senator BOB DOLE began on January 6, 1987, is worthy of separate publication and wide distribution: Now therefore, be it

Resolved by the Senate (the House of Representatives concurring), That there be printed as a Senate document "The United States Historical Almanac" by Senator BOB DOLE to be published under the supervision of the Secretary of the Senate with the editorial assistance of the Senate Historical Office.

Sec. 2. Such document shall include illustrations, and shall be in such style, form, manner, and binding as directed by the Joint Committee on Printing after consultation with the Secretary of the Senate.

Sec. 3. In addition to the usual number of copies, there shall be printed with suitable binding 5,000 additional copies, for use by the Secretary of the Senate.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. ANNUNZIO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on Senate Concurrent Resolution 146, the Senate concurrent resolution just concurred in.

The SPEAKER. Is there objection to the request of the gentleman from Illinois?

There was no objection.

CONFERENCE REPORT ON H.R. 4333 TECHNICAL AND MISCELLANEOUS REVENUE ACT OF 1988

Mr. ROSTENKOWSKI submitted the following conference report and statement on the bill (H.R. 4333) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes.

CONFERENCE REPORT (H. REPT. 100-1104)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4333) to make technical corrections relating to the Tax Reform Act of 1986, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

SECTION 1. SHORT TITLE; ETC.

(a) SHORT TITLE.—This Act may be cited as the "Technical and Miscellaneous Revenue Act of 1988".

(b) DEFINITIONS.—For purposes of this Act—
(1) 1986 CODE.—The term "1986 Code" means the Internal Revenue Code of 1986.

(2) REFORM ACT.—Except where incompatible with the intent, the term "Reform Act" means the Tax Reform Act of 1986.

(c) CLERICAL AMENDMENT.—Paragraph (29) of section 7701(a) of the 1986 Code is amended by striking out "of 1954" and inserting in lieu thereof "of 1986".

(d) TABLE OF CONTENTS.—

TITLE I—TECHNICAL CORRECTIONS TO TAX REFORM ACT OF 1986

Sec. 1001. Amendments related to title I of the Reform Act.

Sec. 1002. Amendments related to title II of the Reform Act.

Sec. 1003. Amendments related to title III of the Reform Act.

Sec. 1004. Amendments related to title IV of the Reform Act.

Sec. 1005. Amendments related to title V of the Reform Act.

Sec. 1006. Amendments related to title VI of the Reform Act.

Sec. 1007. Amendments related to title VII of the Reform Act.

Sec. 1008. Amendments related to title VIII of the Reform Act.

Sec. 1009. Amendments related to title IX of the Reform Act.

Sec. 1010. Amendments related to title X of the Reform Act.

Sec. 1011. Amendments related to parts I and II of subtitle A of title XI of the Reform Act.

Sec. 1011A. Amendments related to parts III and IV of subtitle A of title XI of the Reform Act.

Sec. 1011B. Amendments related to subtitles B and C of title XI of the Reform Act.

Sec. 1012. Amendments related to title XII of the Reform Act.

Sec. 1013. Amendments related to title XIII of the Reform Act.

Sec. 1014. Amendments related to title XIV of the Reform Act.

Sec. 1015. Amendments related to title XV of the Reform Act.

Sec. 1016. Amendments related to title XVI of the Reform Act.

Sec. 1017. Amendments related to title XVII of the Reform Act.

Sec. 1018. Amendments related to title XVIII of the Reform Act.

Sec. 1019. Effective date.

TITLE II—AMENDMENTS RELATED TO TAX PROVISIONS IN OTHER LEGISLATION

Sec. 2001. Amendments related to Superfund Revenue Act of 1986.

"(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

"(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term 'direct skip' shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

"(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if) —

"(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

"(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

"(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

"(C) COORDINATION WITH SECTION 2653(A) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

"(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms 'taxable termination' and 'taxable distribution' shall not include any transfer which would be a direct skip but for subparagraph (A).

"(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor."

"(B) Clause (iii) of section 1443(b)(3)(B) of the Reform Act (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.

"(4) Subsection (d) of section 1433 of the Reform Act is amended—

"(A) by striking out "shall be treated as a direct skip" and inserting in lieu thereof "shall be treated as a direct skip to such grandchild";

"(B) by striking out "would be a direct skip" in subparagraph (B) and inserting in lieu thereof "would be a direct skip to a grandchild"; and

"(C) by adding at the end thereof the following new sentence: "Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence."

"(5) Subparagraph (C) of section 1433(b)(2) of the Reform Act shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act if—

"(A) such direct skip results from the application of section 2044 of the 1986 Code, and

"(B) such direct skip is attributable to property transferred to the trust after October 21, 1988.

(SEC. 1015. AMENDMENTS RELATED TO TITLE XV OF THE REFORM ACT.

"(A) AMENDMENT RELATED TO SECTION 1501 OF THE REFORM ACT.—Subparagraph (B) of section 6724(d)(2) of the 1986 Code is amended by striking out "6031(b)" and inserting in lieu thereof "6031(b) or (c)".

(B) AMENDMENTS RELATED TO SECTION 1503 OF THE REFORM ACT.—

"(1) Subparagraph (A) of section 6013(b)(5) of the 1986 Code is amended to read as follows:

"(A) COORDINATION WITH SECTION 6653.—For purposes of section 6653, where the sum of the amounts shown as tax on the separate returns of each spouse is less than the amount shown as tax on the joint return made under this subsection—

"(i) such sum shall be treated as the amount shown on the joint return,

"(ii) any negligence (or disregard of rules or regulations) on either separate return shall be treated as negligence (or such disregard) on the joint return, and

"(iii) any fraud on either separate return shall be treated as fraud on the joint return."

"(2)(A) Paragraph (1) of section 6653(a) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to negligence (or disregard of rules or regulations), there shall be added to the tax an amount equal to 5 percent of the underpayment."

"(B) Paragraph (1) of section 6653(b) of the 1986 Code is amended to read as follows:

"(1) IN GENERAL.—If any part of any underpayment (as defined in subsection (c)) of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud."

"(C) Paragraph (2) of section 6601(e) of the 1986 Code is amended by striking out "6659" each place it appears and inserting in lieu thereof "6653, 6659".

"(3) Subsection (g) of section 6653 of the 1986 Code is amended by adding at the end thereof the following new sentence: "If any penalty is imposed under subsection (a) by reason of the preceding sentence, only the portion of the underpayment which is attributable to the failure described in the preceding sentence shall be taken into account in determining the amount of the penalty under subsection (a)."

"(4) The amendments made by this subsection (other than paragraph (3)) shall apply to returns the due date for which (determined without regard to extensions) is after December 31, 1988.

"(C) AMENDMENT RELATED TO SECTION 1504 OF THE REFORM ACT.—The repeal made by section 8002(c) of the Omnibus Budget Reconciliation Act of 1986 shall take effect as if the Tax Reform Act of 1986 had been enacted on the day before the date of the enactment of the Omnibus Budget Reconciliation Act of 1986.

"(D) AMENDMENTS RELATED TO SECTION 1511 OF THE REFORM ACT.—Section 6621 of the 1986 Code is amended—

"(1) by striking out "short-term Federal rate" each place it appears in subsections (a) and (b)(1) and inserting in lieu thereof "Federal short-term rate"; and

"(2) by striking out "SHORT-TERM FEDERAL RATE" in the heading of subsection (b) and inserting in lieu thereof "FEDERAL SHORT-TERM RATE".

"(E) AMENDMENTS RELATED TO SECTION 1521 OF THE REFORM ACT.—

"(1)(A) Paragraph (1) of section 6045(c) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person."

"(B) The amendment made by subparagraph (A) shall take effect as if included in the amendments made by section 311(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982.

"(2)(A) Subsection (e) of section 6045 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(3) PROHIBITION OF SEPARATE CHARGE FOR FILING RETURN.—It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of paragraph (1)."

"(B) The amendment made by subparagraph (A) shall take effect on the date of the enactment of this Act.

"(3) Subsection (e) of section 6045 of the 1986 Code is amended—

"(A) by striking out "real estate broker" each place it appears in the text and inserting in lieu thereof "real estate reporting person"; and

"(B) by striking out "REAL ESTATE BROKER" in the heading of paragraph (2) and inserting in lieu thereof "REAL ESTATE REPORTING PERSON".

"(F) AMENDMENT RELATED TO SECTION 1522 OF THE REFORM ACT.—Section 6050M of the 1986 Code is amended by adding at the end thereof the following new subsection:

"(e) EXCEPTION FOR CERTAIN CLASSIFIED OR CONFIDENTIAL CONTRACTS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), this section shall not apply in the case of a contract described in paragraph (3).

"(2) REPORTING REQUIREMENT.—Each Federal executive agency which has entered into a contract described in paragraph (3) shall, upon a request of the Secretary which identifies a particular person, acknowledge whether such person has entered into such a contract with such agency and, if so, provide to the Secretary—

"(A) the information required under this section with respect to such person, and

"(B) such other information with respect to such person which the Secretary and the head of such Federal executive agency agree is appropriate.

"(3) DESCRIPTION OF CONTRACT.—For purposes of this subsection, a contract between a Federal executive agency and another person is described in this paragraph if—

"(A) the fact of the existence of such contract or the subject matter of such contract has been designated and clearly marked or clearly represented, pursuant to the provisions of Federal law or an Executive order, as requiring a specific degree of protection against unauthorized disclosure for reasons of national security, or

"(B) the head of such Federal executive agency (or his designee) pursuant to regulations issued by such agency determines, in writing, that filing the required return under this section would interfere with the effective conduct of a confidential law enforcement or foreign counterintelligence activity."

"(G) AMENDMENTS RELATED TO SECTION 1523 OF THE REFORM ACT.—Section 6676 of the 1986 Code is amended—

"(1) by striking out "6049, or 6050N" in subsection (a)(3) and inserting in lieu thereof "or 6049";

"(2) by striking out "6049, or 6050N" in subsection (b)(1)(A) and inserting in lieu thereof "or 6049"; and

"(3) by striking out "DIVIDENDS, AND ROYALTIES" in the heading for subsection (b) and inserting in lieu thereof "AND DIVIDEND".

"(H) AMENDMENTS RELATED TO SECTION 1542 OF THE REFORM ACT.—Subsection (h) of section 6154 of the 1986 Code (as in effect before its repeal by the Revenue Act of 1987) is amended—

"(1) by striking out "subject to the" imposed by section 4940" in paragraph (1),

"(2) by amending paragraph (2) to read as follows:

CONGRESSIONAL RECORD — HOUSE

October 21, 1988

SEC. 303. (CONFORMING AMENDMENTS RELATING TO COVERAGE UNDER OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM.)

(a) EXCLUSION FROM WAGES OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 209 of the Social Security Act (42 U.S.C. 409) is amended—

(1) in subsection (r), by striking out "or" at the end;

(2) in subsection (s), by striking out the period and inserting in lieu thereof "; or"; and

(3) by inserting after subsection (s) the following new subsection:

"(t) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(b) EXCLUSION FROM NET EARNINGS FROM SELF-EMPLOYMENT OF INCOME DERIVED BY INDIANS FROM EXERCISE OF FISHING RIGHTS.—Section 211(a) of such Act (42 U.S.C. 411(a)) is amended—

(1) in paragraph (12), by striking out "and" at the end;

(2) in paragraph (13), by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (13) the following new paragraph:

"(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights)."

(c) CROSS-REFERENCES IN SECA AND FICA TO APPLICABLE INDIAN FISHING RIGHTS PROVISIONS.—

(1) SECA.—Subsection (a) of section 1402 of the 1986 Code (relating to net earnings from self-employment) is amended by striking out "and" at the end of paragraph (13), by striking out the period at the end of paragraph (14) and inserting in lieu thereof "; and", and by inserting after paragraph (14) the following new paragraph:

"(15) In the case of a member of an Indian tribe, the special rules of section 7873 (relating to income derived by Indians from exercise of fishing rights) shall apply."

(2) FICA.—Subsection (a) of section 3121 of the 1986 Code (relating to wages) is amended by striking out "or" at the end of paragraph (19), by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; or", and by inserting after paragraph (20) the following new paragraph:

"(21) In the case of a member of an Indian tribe, remuneration on which no tax is imposed by chapter 1 is exempt from section 7873 (relating to income derived by Indians from exercise of fishing rights)."

SEC. 304. EFFECTIVE DATE: NO INFERENCE CREATED.

(a) EFFECTIVE DATE.—The amendments made by this subtitle shall apply to all periods beginning before, on, or after the date of the enactment of this Act.

(b) NO INFERENCE CREATED.—Nothing in the amendments made by this subtitle shall create any inference as to the existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of March 17, 1988, by any treaty, law, or Executive Order.

TITLE IV—EXTENSIONS AND MODIFICATIONS OF EXPIRING TAX PROVISIONS

SEC. 400. EXTENSION AND MODIFICATION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) EXTENSION.—Subsection (d) of section 127 of the 1986 Code (relating to educational assistance programs) is amended by striking out "December 31, 1987" and inserting in lieu thereof "December 31, 1988".

(b) RESTRICTIONS RELATING TO EDUCATION AT THE GRADUATE LEVEL.—

(1) IN GENERAL.—Paragraph (1) of section 127(c) of the 1986 Code is amended by adding at the end thereof the following new sentence: "The term 'educational assistance' also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree."

(2) SPECIAL RULE FOR TEACHING AND RESEARCH ASSISTANTS.—Subsection (d) of section 117 of the 1986 Code is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULES FOR TEACHING AND RESEARCH ASSISTANTS.—In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, paragraph (2) shall be applied as if it did not contain the phrase 'below the graduate level'."

(c) EFFECTIVE DATES.—The amendments made by this section shall apply to taxable years beginning after December 31, 1987.

SEC. 402. EXTENSION AND MODIFICATION OF EXCLUSION OF AMOUNTS RECEIVED UNDER GROUP LEGAL SERVICES PLANS.

(a) EXTENSION.—Section 120(e) of the 1986 Code is amended by striking out "1987" and inserting in lieu thereof "1988".

(b) LIMITATION ON VALUE OF INSURANCE PROTECTION WHICH MAY BE EXCLUDED.—

(1) IN GENERAL.—Section 120(a) of the 1986 Code is amended by adding at the end thereof the following new sentence:

"No exclusion shall be allowed under this section with respect to an individual for any taxable year to the extent that the value of insurance (whether through an insurer or self-insurance) against legal costs incurred by the individual (or his spouse or dependents) provided under a qualified group legal services plan exceeds \$70."

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 125(e)(2) of the 1986 Code is amended by inserting "or any insurance under a qualified group legal services plan the value of which is so includable only because it exceeds the limitation of section 120(a)" after "section 79".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1987.

SEC. 403. CARRYOVER OF POST-1987 LOW-INCOME HOUSING CREDIT DOLLAR AMOUNTS PERMITTED.

(a) IN GENERAL.—Section 42(h)(1) of the 1986 Code (relating to housing credit dollar amount) may not be carried over, etc.), as amended by section 1002(l)(14)(A) of this Act, is amended by adding at the end thereof the following new subparagraph:

"(E) EXCEPTION WHERE 10 PERCENT OF COST INCURRED.—

"(i) IN GENERAL.—An allocation meets the requirements of this subparagraph if such allocation is made with respect to a qualified building which is placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made.

"(ii) QUALIFIED BUILDING.—For purposes of clause (i), the term 'qualified building' means any building which is part of a project if the taxpayer's basis in such project (as of the close of the calendar year in which the allocation is made) is more than 10 percent of the taxpayer's reasonably expected basis in such project (as of the close of the second calendar year referred to in clause (i)). Such term does not include any existing building unless a credit is allowable under

subsection (e) for rehabilitation expenditures paid or incurred by the taxpayer with respect to such building for a taxable year ending during the second calendar year referred to in clause (i) or the prior taxable year."

(b) CONFORMING AMENDMENTS.—

(1) Section 42(h)(1)(B) of the 1986 Code, as amended by section 1002 of this Act, is amended by striking out "(C) or (D)" and inserting in lieu thereof "(C), (D), or (E)".

(2) Paragraph (3) of section 501(c) of the Reform Act is hereby repealed.

(3) Subsection (n) of section 42 of the 1986 Code, as amended by title I of this Act, is amended to read as follows:

"(n) TERMINATION.—The State housing credit ceiling under subsection (h) shall be zero for any calendar year after 1989 and subsection (h)(4) shall not apply to any building placed in service after 1989."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts allocated in calendar years after 1987.

SEC. 404. SIMPLIFICATION OF RULE WHERE PARTNERSHIP HOLDS QUALIFIED LOW-INCOME BUILDING.

(a) IN GENERAL.—Subparagraph (B) of section 42(j)(5) of the 1986 Code, as amended by title I of this Act, is amended to read as follows:

"(B) PARTNERSHIPS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any partnership which has 35 or more partners unless the partnership elects not to have this paragraph apply."

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as if included in the amendments made by section 252 of the Reform Act.

(2) PERIOD FOR ELECTION.—The period for electing not to have section 42(j)(5) of the 1986 Code apply to any partnership shall not expire before the date which is 6 months after the date of the enactment of this Act.

SEC. 405. PROVISIONS RELATING TO MORTGAGE REVENUE BONDS AND MORTGAGE CREDIT CERTIFICATES.

(a) EXTENSION OF AUTHORITY TO ISSUE BONDS AND CERTIFICATES.—

(1) Subparagraph (B) of section 143(a)(1) of the 1986 Code (relating to termination) is amended by striking out "December 31, 1988" each place it appears and inserting in lieu thereof "December 31, 1989".

(2) Subsection (h) of section 25 of the 1986 Code (relating to credit for interest on certain home mortgages), as amended by section 1013(a)(26) of this Act, is amended by striking out "1988" and inserting in lieu thereof "1989".

(b) CALCULATION OF INCOME LIMITS FOR QUALIFIED MORTGAGE BOND FINANCED HOMES IN HIGH HOUSING COST AREAS.—Section 143(f) of the 1986 Code (relating to income requirements) is amended by adding at the end thereof the following new paragraph:

"(5) ADJUSTMENT OF INCOME REQUIREMENT BASED ON RELATION OF HIGH HOUSING COSTS TO INCOME.—

"(A) IN GENERAL.—If the residence (for which financing is provided under the issue) is located in a high housing cost area and the limitation determined under this paragraph is greater than the limitation otherwise applicable under paragraph (1), there shall be substituted for the income limitation in paragraph (1), a limitation equal to the percentage determined under subparagraph (B) of the area median gross income for such area.

"(B) INCOME REQUIREMENTS FOR RESIDENCES IN HIGH HOUSING COST AREA.—The percentage determined under this subparagraph for a residence located in a high housing cost

October 21, 1988

III. EXTENSIONS AND MODIFICATIONS OF EXPIRING TAX PROVISIONS

A. Extension of exclusion for employer-provided educational assistance

Present Law

Under prior law (taxable years beginning before January 1, 1988), an employee's gross income for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee (without regard to whether the education was job-related) if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements (sec. 127). This exclusion, which expired for taxable years beginning after December 31, 1987, was limited to \$5,250 of educational assistance provided with respect to an individual during a calendar year and was not available for education involving sports, games, or hobbies.

House Bill

Extension

The section 127 exclusion for educational assistance is restored retroactively to the date of expiration and is extended so that it expires for taxable years beginning after December 31, 1990. The prior-law limit of \$5,250 is reduced to \$1,500.

Graduate-level education

The exclusion does not apply to any payment for, or the provision of any benefits with respect to, any graduate-level courses of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or similar advanced academic or professional degree. For this purpose, the phrase "graduate-level course" means a course taken by an individual who (1) has received a bachelor's degree (or the equivalent thereof), or (2) is receiving credit toward a more advanced degree.

The section 127 limitation with respect to graduate-level courses does not affect the eligibility of tuition reduction benefits paid to graduate teaching or research assistants at colleges or universities to be excluded from income under section 117(d) subject, of course, to the limitation of section 117(c).

Sports, games, and hobbies

The House bill clarifies that education with respect to a subject commonly considered a sport, game, or hobby, such as photography or gardening, is ineligible for the exclusion unless such education (1) has a reasonable relationship to an activity maintained by the employee for profit, (2) has a reasonable relationship to the business of the employer, or (3) is required as part of a degree program.

Effective date

The provisions of the House bill are effective on the date of enactment. The amendments with respect to the \$1,500 limit and graduate-level education apply to taxable years beginning after December 31, 1988. The amendment with respect to hobbies is considered a retroactive clarification of prior law.

Senate Amendment

Extension

The section 127 exclusion is restored retroactively to the date of expiration and is extended so that it expires for taxable years beginning after December 31, 1988.

Graduate-level education

The Senate amendment is the same as the House bill, except that the present law rules relating to benefits provided to graduate teaching and research assistants are retained. In other words, the Senate amendment permits amounts paid to graduate

teaching and research assistants to be excluded from income under either the tuition reduction provision of section 117(d) or the educational assistance program provision of section 127.

Sports, games, and hobbies

The Senate amendment is the same as the House bill.

Single trust

It was unclear under prior law whether the prohibition on providing employees with a choice between nontaxable educational assistance benefits under section 127 and other remuneration includible in gross income prohibited the provision of taxable and nontaxable educational assistance benefits from a single trust. The Senate amendment clarifies the prior-law rules so that it is permissible to pay taxable and nontaxable educational assistance benefits from the same trust.

Effective date

Senate amendment provisions are generally effective as of the date of expiration of the exclusion. The provisions with respect to hobbies and employee choice are considered to be retroactive clarifications of prior law.

Conference Agreement

Extension

The conference agreement follows the Senate amendment.

Graduate-level education

The conference agreement follows the House bill, except that the provision is effective for taxable years beginning after December 31, 1987. In addition, the conference agreement makes permanent the rule permitting tuition reduction benefits paid to graduate teaching and research to be excluded from income under section 117(d) (subject to the compensation limit of section 117(c)).

Sports, games, and hobbies

The conference agreement follows the House bill and Senate amendment.

Single trust

The conference agreement follows the Senate amendment.

B. Extension of Exclusion for Employer-Provided Group Legal Services

Present Law

Under prior law, amounts contributed by an employer to a qualified group legal services plan for an employee or amounts reimbursed to an employee for legal services under such a plan were excluded from the employee's gross income (sec. 120). In addition, under prior law, an organization, the exclusive function of which was to provide legal services or indemnification against the cost of legal services as part of a qualified group legal services plan, was entitled to tax-exempt status (sec. 501(c)(20)). The exclusion for group legal services benefits and the tax exemption expired for taxable years ending after December 31, 1987.

House Bill

No provision.

Senate Amendment

The Senate amendment restores the exclusion for group legal services and the exemption for group legal services organizations retroactively to the date of expiration and extends them so that they expire for taxable years ending after December 31, 1988. The exclusion is limited to an annual premium value of \$70. The provision under a tax-exempt trust of group legal services benefits in excess of the \$70 annual limit and taxable solely for that reason will not cause the trust to lose its tax-exempt status.

Similarly, for taxable years ending before January 1, 1989, the provision under a cafeteria plan of a group legal services benefit that is taxable solely because of the \$70 annual limit will not disqualify the cafeteria plan.

The provision is effective as of the date of the expiration of the exclusion and exemption.

Conference Agreement

The conference agreement follows the Senate amendment.

C. Low-Income Rental Housing Tax Credit

1. Extension of the low-income rental housing tax credit

Present Law

A credit is allowed in annual installments over 10 years for qualifying low-income rental housing (Code sec. 42). To qualify as a credit project, at least 40 percent of the housing units in the project must be occupied by tenants having incomes of 60 percent or less of the area median income or at least 20 percent of the housing units must be occupied by tenants having incomes of 50 percent or less of the area median income. If property on which a low-income housing credit is claimed ceases to qualify as low-income rental housing or is disposed of before the end of a 15-year credit compliance period, a portion of the credit may be recaptured.

House Bill

The low-income rental housing credit is extended for one year, through December 31, 1990. The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Modifications to the low-income rental housing tax credit

Present Law

A tax credit payable in annual installments over 10 years is available for qualifying low-income rental housing. Credit authority is granted by State agencies subject to an annual credit authority limitation for each State.

To be a qualified low-income project, an allocation of credit authority must be received from the State in the year in which the building is placed in service. States may not carry over unused credit authority from one year to the next. A limited exception to these rules permits carry over of credit authority from the last year of authorized credit authority if a project is either new construction or a substantial rehabilitation, more than 10 percent of anticipated costs were incurred prior to 1989, and the building is placed in service by the end of 1990.

To qualify as a credit project, a low-income rental housing project must meet minimum low-income tenant occupancy requirements. In addition, the gross rent charged to low-income tenants may not exceed thirty percent of the applicable area median income qualifying as low income. Qualifying tenant incomes are adjusted for family size.

If property for which a low-income housing credit is claimed ceases to qualify as low-income rental housing or is disposed of, a portion of the credits may be recaptured. Partnerships having more than thirty-five partners, with no more than fifty percent of the partnership interests being held by corporations, may elect to have the recapture determined at the partnership level rather than at the partner level.

H 10992

CONGRESSIONAL RECORD — HOUSE

October 21, 1988

months, shall, at the time his annuity under section 2(a)(1) of this Act begins to accrue, be entitled to a lump sum in the amount provided under subdivision (2) of this subsection. If the full amount of a lump sum under this subsection cannot be determined at the time an individual's annuity under section 2(a)(1) begins to accrue, such lump sum shall be payable at such time thereafter as such amount can be determined. If an individual otherwise eligible for a lump sum under this section dies before he becomes entitled to an annuity under section 2(a)(1), or before he receives payment of such lump sum, such lump sum shall be payable to the person, if any, who is determined by the Board to be such individual's widow or widower and who will not have died before receiving payment of such lump sum. If there be no such widow or widower, such lump sum shall be payable to the children, grandchildren, parents, brothers and sisters, or the estate of the deceased individual in the same manner as if such lump sum were a lump sum payable under subsection (c)(1) of this section.

"(2) The lump sum provided under subdivision (1) of this subsection shall be in an amount equal to the product of (A) the compensation attributable to the additional months of service which would have been credited to the individual due to the receipt of payments in the nature of separation or severance pay pursuant to section 314(4) of this Act if such individual had remained in an employment relation to one or more employers or had continued to be an employee representative and (B) the rate of tax, or rates of tax, imposed on the compensation described in clause (A) of this subdivision by section 3201(b) of the Internal Revenue Code of 1986."

SEC. 7302. DELETION OF LAST PERSON SERVICE AS A DISQUALIFICATION.

(a) IN GENERAL.—Section 2(e) of the Railroad Retirement Act of 1974 is amended—

(1)(A) in subdivision (1), by striking out "any person, whether or not"; and
(B) by striking out "(but with the" and all that follows through "political subdivision of a State";

(2) in subdivision (2), by striking out "and of the person, or persons, by whom he was last employed"; and

(3) in subdivision (3), by striking out "or to the last person, or persons, by whom he was employed prior to the date on which the annuity under subsection (a)(1) began to accrue";

(b) DEDUCTION FOR WORK.—Section 2(f) of such Act is amended by adding at the end thereof the following new subdivision:

"(6)(A) Except as provided in subparagraph (B)—

"(i) that portion of the annuity for any month of an individual as is computed under section 3(b) and as adjusted under section 3(g), plus any supplemental amount for such month under section 3(e), and that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d), shall each be subject to a deduction of \$1 for each \$2 of compensation received by such individual from compensated service rendered in such month to the last person, or persons, by whom such individual was employed before the date on which the annuity of such individual under subsection (a)(1) began to accrue; and

"(ii) that portion of the annuity for any month of a spouse as is computed under section 4(b) and as adjusted under section 4(d) shall be subject to a deduction of \$1 for each \$2 of compensation received by such spouse from compensated service rendered in such month to the last person, or persons, by whom such spouse was employed before the

date on which the annuity of such spouse under subsection (c)(1) began to accrue.

"(B) Any deductions imposed by this subdivision for any month shall not exceed 50 percent of the annuity amount for such month to which such deductions apply."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to annuities payable under the Railroad Retirement Act of 1974 for months beginning after the date of enactment of this Act.

SEC. 7303. EARNINGS OF DISABILITY ANNUITIES.

(a) IN GENERAL.—Section 2(e)(4) of the Railroad Retirement Act of 1974 is amended—

(1) by striking out "\$200 in earnings" and inserting in lieu thereof "\$400 in earnings (after deduction of disability related work expenses)";

(2) by striking out "\$2,400" each place it appears and inserting in lieu thereof "\$4,800 (after deduction of disability related work expenses)";

(3) by striking out "\$200" each place it appears and inserting in lieu thereof "\$400"; and

(4) by striking out "\$100" and inserting in lieu thereof "\$200".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to months in calendar years beginning after December 31, 1988.

SEC. 7304. ALLOWANCE OF CREDIT FOR MILITARY SERVICE.

(a) IN GENERAL.—Section 1(g)(2) of the Railroad Retirement Act of 1974 is amended by adding at the end thereof the following:

"For purposes of section 3(i)(2) of this Act, the period beginning on June 15, 1948, and ending on December 15, 1950, shall be deemed to be a war service period with respect to any individual who without intervening employment not covered by this Act rendered service as an employee to an employer under this Act in the year such individual was released from active military service or in the year immediately following such year."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to annuities accruing in months after the date of enactment of this Act.

TITLE VIII—AMENDMENTS RELATING TO SOCIAL SECURITY ACT PROGRAMS

Subtitle A—Old-Age, Survivors, and Disability Insurance and Related Provisions

SEC. 8001. INTERIM DISABILITY BENEFITS IN CASES OF DELAYED FINAL DECISIONS.

(a) DISABILITY BENEFITS UNDER TITLE II.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection:

"Interim Benefits in Cases of Delayed Final Decisions

"(h)(1) In any case in which an administrative law judge has determined after a hearing as provided under section 205(b) that an individual is entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which such 110-day period expires and ending with the month preceding the month in which such final decision is issued.

"(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any

period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

"(3) Any benefits currently paid under this title pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this title (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 206(b)(1)."

(b) BENEFITS UNDER TITLE XVI.—Section 1631(a) of such Act (42 U.S.C. 1383(a)) is amended by adding at the end the following new paragraph:

"(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) that an individual is entitled to benefits based on disability or blindness under this title and the Secretary has not issued his final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

"(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Secretary's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

"(C) Any benefits currently paid under this title pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purpose of this title, unless payment of such benefits was fraudulently obtained."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act.

SEC. 8002. APPLICATION OF EARNINGS TEST IN YEAR OF INDIVIDUAL'S DEATH.

(a) YEAR IN WHICH INDIVIDUAL WOULD HAVE ATTAINED RETIREMENT AGE BUT FOR THE INDIVIDUAL'S DEATH IN SUCH YEAR TREATED AS A YEAR THROUGHOUT WHICH THE EARNINGS TEST FOR INDIVIDUALS WHO HAVE ATTAINED RETIREMENT AGE IS APPLICABLE.—Paragraph (3) of section 203(f) of the Social Security Act (42 U.S.C. 403(f)(3)) is amended by inserting "(or, but for the individual's death, would have attained)" after "who has attained".

(b) ELIMINATION OF THE SHORT TAXABLE YEAR IN THE YEAR OF DEATH FOR PURPOSES OF THE EARNINGS TEST.—Paragraph (3) of section 203(f) of such Act is further amended—

(1) by inserting after the first sentence the following new sentence: "For purposes of the preceding sentence, notwithstanding section 211(e), the number of months in the taxable year in which an individual dies shall be 12"; and

(2) in the last sentence, by striking "preceding sentence" and inserting "first sentence of this paragraph".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to deaths after the date of the enactment of this Act.

SEC. 8003. PHASEOUT OF REDUCTION IN WINDFALL BENEFITS.

(a) IN GENERAL.—Section 215(a)(7)(D) of the Social Security Act (42 U.S.C. 415(a)(7)(D)) is amended—

(1) by striking "more than 25 years of coverage" in the second sentence and inserting "more than 20 years of coverage"; and
(2) by striking "shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—" and inserting "shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table"; and
(3) by striking clauses (i) through (iv) and inserting the following table:

"If the number of such individual's years of coverage (as so defined) is:	The applicable percent is:
29.....	85 percent
28.....	80 percent
27.....	75 percent
26.....	70 percent
25.....	65 percent
24.....	60 percent
23.....	55 percent
22.....	50 percent
21.....	45 percent."

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to benefits payable for months after December 1988.

SEC. 806A. DENIAL OF BENEFITS TO INDIVIDUALS DEPORTED OR ORDERED DEPORTED ON THE BASIS OF ASSOCIATIONS WITH THE NAZI GOVERNMENT OF GERMANY DURING WORLD WAR II.

(a) **IN GENERAL.**—Section 202(n)(1) of the Social Security Act (42 U.S.C. 402(n)(1)) is amended by striking "or (18)" in the matter preceding subparagraph (A) and inserting "(18), or (19)".

(b) **TIME OF DEPORTATION.**—Section 202(n) of such Act is further amended by adding at the end the following new paragraph:

"(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of deportation has been issued under paragraph (19) of section 241(a) of the Immigration and Nationality Act (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19) as of the date on which such order became final."

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act, and only to benefits for months beginning (and deaths occurring) on or after such date.

SEC. 806B. MODIFICATIONS IN THE TERM OF OFFICE OF PUBLIC MEMBERS OF THE BOARD OF TRUSTEES OF THE SOCIAL SECURITY TRUST FUNDS.

(a) **IN GENERAL.**—Sections 201(c), 1817(b), and 1841(b) of the Social Security Act (42 U.S.C. 401(c), 1395i(b), 1395t(b)(i)) are each amended by inserting after the first sentence the following: "A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term."

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust

Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act.

SEC. 806C. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1)(iii), by striking "June 1989" and inserting "June 1990"; and

(2) in paragraph (3)(B), by striking "January 1, 1989" and inserting "January 1, 1990".

SEC. 806D. EXEMPTION FROM SOCIAL SECURITY FOR EMPLOYERS AND EMPLOYEES WHO ARE BOTH MEMBERS OF CERTAIN RELIGIOUS FAITHS.

(a) **EXEMPTION FROM COVERAGE UNDER SOCIAL SECURITY.**—

(1) **IN GENERAL.**—Subchapter C of chapter 21 of the Internal Revenue Code of 1986 (general provisions under Federal Insurance Contributions Act) is amended by redesignating section 3127 as section 3128, and by inserting after section 3126 the following new section:

"SEC. 3127. EXEMPTION FOR EMPLOYERS AND THEIR EMPLOYEES WHERE BOTH ARE MEMBERS OF RELIGIOUS FAITHS OPPOSED TO PARTICIPATION IN SOCIAL SECURITY ACT PROGRAMS.

"(a) **IN GENERAL.**—Notwithstanding any other provision of this chapter (and under regulations prescribed to carry out this section), in any case where—

"(1) an employer is a member of a recognized religious sect or division thereof described in section 1402(g)(1) and an adherent of established tenets or teachings of such sect or division as described in such section, and has filed and had approved under subsection (b) an application (in such form and manner, and with such official, as may be prescribed by such regulations) for an exemption from the taxes imposed by section 3111, and

"(2) an employee of such employer who is also a member of such a religious sect or division and an adherent of its established tenets or teachings has filed and had approved under subsection (b) an identical application for exemption from the taxes imposed by section 3101,

such employer shall be exempt from the taxes imposed by section 3111 with respect to wages paid to each of his employees who meets the requirements of paragraph (2) and each such employee shall be exempt from the taxes imposed by section 3101 with respect to such wages paid to him by such employer.

"(b) **APPROVAL OF APPLICATION.**—An application for exemption filed by an employer under subsection (a)(1) or by an employee under subsection (a)(2) shall be approved only if—

"(1) such application contains or is accompanied by the evidence described in section 1402(g)(1)(A) and a waiver described in section 1402(g)(1)(B),

"(2) the Secretary of Health and Human Services makes the findings (with respect to such sect or division) described in section 1402(g)(1)(C), (D), and (E), and

"(3) no benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) to the individual filing the application at or before the time of such filing.

"(c) **EFFECTIVE PERIOD OF EXEMPTION.**—An exemption granted under this section to any employer with respect to wages paid to any of his employees, or granted to any such employee, shall apply with respect to wages paid by such employer during the period—

"(1) commencing with the first day of the first calendar quarter, after the quarter in

which such application is filed, throughout which such employer or employee meets the applicable requirements specified in subsections (a) and (b), and

"(2) ending with the last day of the calendar quarter preceding the first calendar quarter thereafter in which (A) such employer or the employee involved ceases to meet the applicable requirements of subsection (a), or (B) the sect or division thereof of which such employer or employee is a member is found by the Secretary of Health and Human Services to have ceased to meet the requirements of subsection (b)(2)."

(2) **CLERICAL AMENDMENT.**—The table of sections for such subchapter C of such Code is amended by striking the last item and inserting the following:

"Sec. 3127. Exemption for employers and their employees where both are members of religious faiths opposed to participation in Social Security Act programs.

"Sec. 3128. Short title."

(b) **CONFORMING EXEMPTION FROM ELIGIBILITY FOR BENEFITS.**—Section 202(v) of the Social Security Act (42 U.S.C. 402(v)) is amended—

(1) by inserting "(1)" after "(v)";

(2) by inserting "and subject to paragraph (3)," after "title,";

(3) by striking "waiver, except that" and all that follows and inserting "waiver,"; and

(4) by adding at the end the following new paragraphs:

"(2) Notwithstanding any other provision of this title, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

"(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on—

"(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 on which the cessation of such exemption is based, and

"(B) his self-employment income for and after the taxable year in which occurs such failure."

(c) **CONFORMING AMENDMENTS REMOVING TIME LIMIT ON SECA EXEMPTION APPLICATIONS.**—Section 1402(g) of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraphs (2) and (4); and

(2) by redesignating paragraphs (3) and (5) as paragraphs (2) and (3), respectively.

(d) **EFFECTIVE DATES.**—The amendments made by subsection (a) shall apply to wages paid after December 31, 1988. The amendments made by subsection (b) shall apply to benefits paid for (and items and services furnished in) months after December 1988. The amendments made by subsection (c) shall apply to applications for exemptions filed on or after the date of the enactment of this Act.

SEC. 806E. BLOOD DONOR LOCATOR SERVICE.

(a) **EXPLICIT AUTHORIZATION OF USE OF SOCIAL SECURITY ACCOUNT NUMBERS TO ASSIST IN IDENTIFICATION OF BLOOD DONORS.**—Sec-

Wind Fall 13me

H 11070

CONGRESSIONAL RECORD — HOUSE

October 21, 1988

that is used to increase the social security taxable wage base.

(9) The \$1,500 base year earnings requirement is changed to a requirement of 2.5 times the indexed compensation amount. This has the effect of continuing to require employment in at least 3 months of the base year.

Conference Agreement

The conference agreement generally follows the Senate amendment with respect to the above items, except that the reporting date for the Railroad Retirement Reform Commission authorized under P.L. 100-203 would be extended one year from October 1, 1989 to October 1, 1990.

B. Railroad Retirement Provisions**Present Law**

(1) Certain individuals retiring from railroad employment receive a severance payment which is subject to the tier II railroad retirement tax even though the individual gets no additional service-month credit because of that payment.

(2) Railroad retirement benefits (including spouses benefits) are not payable for months in which the retiree works for his or her last non-railroad employer.

(3) Disability annuitants lose benefits for any month in which they have earnings of more than \$200 for the month and more than \$2,400 for the year.

(4) Military service credit is given under the railroad retirement system to certain individuals previously in rail employment if their military service occurred in a war period. The period of June 15, 1948 to December 15, 1950 is not considered a war period.

House Bill

No provision in H.R. 4333. (A separate House-passed bill—H.R. 2167—contains largely identical provisions to the Senate amendment.)

ees will
paid on
result in
applies
January

limited
ced
addi-
The

supplemental
more than 50 percent.

limits limit on disability annu-
increased to \$400 for the month and
for the year. In determining these
amounts, disability related work expenses
are excluded.

(4) The June 15, 1948 to December 15, 1950 period is added to what is considered to be a war period in the case of individuals who returned to railroad employment in the year in which their military service ended or in the following year.

Conference Agreement

The conference agreement generally follows the Senate amendment.

C. Reports and Study**Present Law**

No provision.

House Bill

No provision in H.R. 4333. (A separate House-passed bill—H.R. 2167—contains largely identical provisions to the Senate amendment.)

Senate Amendment

(1) The Railroad Retirement Board is directed to make annual reports to Congress

on the status of the railroad unemployment insurance system. The annual reports are due by July 1 of each year, beginning in 1989.

(2) The Comptroller General is directed to conduct a study to determine the extent and impact of fraud and payment error in the railroad unemployment program. The report is due not later than one year after date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

VII. SOCIAL SECURITY AMENDMENTS; MEDICARE AND MEDICAID AMENDMENTS**A. Social Security Act Amendments****1. Interim benefits in cases of delayed final decisions****Present Law**

If, upon appeal, an individual receives an unfavorable determination regarding disability benefits from an Administrative Law Judge (ALJ), he or she may appeal the ALJ's decision to the Social Security Administration's Appeals Council. If, on the other hand, the individual receives a favorable determination from the ALJ, the Appeals Council may review the determination on its "own motion". No disability benefits are paid while a case is under review by the Appeals Council.

House Bill

In any disability case under Title II or Title XVI of the Social Security Act in which an ALJ has made a decision favorable to the individual and the Appeals Council has not rendered a final decision within 110 days, interim benefits would be provided to the individual. (Delays in excess of 20 days caused by or on behalf of the claimant would not count in determining the 110 day period.) These benefits would begin with the month before the month in which the 110-day period expired, and would not be considered overpayments if the final decision were adverse, unless the benefits were fraudulently obtained.

The provision would be effective with respect to favorable ALJ decisions made 180 days or more after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

2. Application of earnings test in year of individual's death**Present Law**

A social security beneficiary under age 70 with earnings in excess of certain thresholds is subject to a \$1 reduction in benefits for every \$2 earned over the exempt amount. The annual exempt amount under the earnings test is lower for beneficiaries under age 65 than for those 65-69. In 1988, the exempt amount for those under age 65 is \$6,120, and the age 65-69 exempt amount is \$8,400. The higher exempt amount is applicable in the year a beneficiary reaches age 65.

If a beneficiary dies, the annual exempt amount applicable at the time of death is prorated based on the number of months that he or she lived during the year. In addition, the lower exempt amount applies if a beneficiary dies before his or her birthdate in the year the beneficiary would have turned 65. Thus, overpayments can occur when beneficiaries die unexpectedly and the thresholds on earnings are lower than anticipated.

House Bill

The annual exempt amount would not be prorated in the year of death. In addition, the higher annual exempt amount for bene-

ficiaries age 65-69 would apply to people who die before their birthdate in the year that they otherwise would have attained age 65.

The provision would be effective with respect to deaths after the date of enactment.

Senate Amendment

No provision.

Conference Report

The conference agreement follows the House bill.

Phase-out of reduction in "windfall" benefit**Present Law**

Under the "windfall" benefit provision of the Social Security Amendments of 1983, social security benefits are generally reduced for workers who also have pensions from work that was not covered under social security (e.g., work under the Federal Civil Service Retirement System). Under the regular, weighted benefit formula, benefits are determined by applying a set of declining percentages to average indexed monthly earnings. For workers who reach age 62 in 1988, a worker's basic benefit is equal to 90 percent of the first \$319 of average indexed monthly earnings, 32 percent of earnings from \$319 through \$1,922, and 15 percent of earnings above \$1,922. The formula applicable to those with pensions from noncovered employment substitutes a rate of 40 percent for the 90-percent rate in the first bracket. (The second and third factors of the formula remain the same.) The resulting reduction in the worker's social security benefit is limited to one-half the amount of the non-covered pension. The new law is being phased in over a 5-year period, beginning with those persons first eligible for social security benefits in 1986.

Workers who have 30 years or more of substantial social security coverage are fully exempt from this treatment. For workers who have 26-29 years of coverage, the percentage in the first bracket in the formula increases by 10 percentage points for each year over 25, as illustrated below:

First factor in formula

Years of social security coverage	(percent)
25 or fewer	40
26	50
27	60
28	70
29	80
30 or more	90

House Bill

The years of social security coverage required in order for an individual to be exempt from the windfall benefit formula would be lowered from 30 to 25 years. Similarly, the years of coverage at which the formula gradually takes effect would be scaled back, as illustrated below:

First factor in formula

Years of social security coverage	(percent)
20 or fewer	40
21	50
22	60
23	70
24	80
25 or more	90

The provision would be effective for benefits payable for months after December 1988.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the reduction would be phased out in five percent increments between 20 and 30 years of coverage, as follows:

October 21, 1988

CONGRESSIONAL RECORD — HOUSE

Years of social security coverage	First factor in formula (percent)
20 or fewer	40
21	45
22	50
23	55
24	60
25	65
26	70
27	75
28	80
29	85
30 or more	90

4. Denial of benefits to individuals deported or ordered deported on the basis of association with the Nazi government of Germany during World War II

Present Law

People who are deported for violating specified provisions of the Immigration and Nationality Act lose their social security benefits. The list of provisions for which people are denied benefits does not, however, include paragraph 19 of that Act. Paragraph 19, which was added to the Immigration and Nationality Act of 1978, pertains to people deported for certain activities in association with the Nazi government of Germany during World War II.

House Bill

Benefits to individuals deported as Nazi war criminals under paragraph 19 of the Immigration and Nationality Act would be terminated.

The provision would apply only in the case of deportations occurring and final orders of deportation issued, on or after the date of enactment, and only with respect to benefits beginning on or after such date.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Amendment

The conference agreement follows the House bill and the Senate amendment.

5. Modification in the term of office of public members of the Social Security Boards of Trustees

Present Law

The Boards of Trustees of the Social Security Trust Funds are composed of the Secretaries of the Treasury, Labor, Health and Human Services, and two members of the public. The members of the public are nominated by the President and confirmed by the Senate. The law specifies that their term of service is for four years, but is otherwise silent on the length of term for a public member appointed to fill a vacancy before the end of his or her term. The law is likewise silent on whether a public member is permitted to serve after the expiration of his or her term until a successor has taken office.

House Bill

A public member appointed to fill a vacancy occurring before the end of a term would be appointed only for the remainder of such term. A public member, whether appointed for a full term or appointed to fill an unexpired term, would be permitted to serve after the expiration of that term until a successor had taken office.

The provision would be effective upon enactment.

Senate Amendment

The Senate amendment is similar to the House bill, except that a trustee could serve beyond the expiration of his or her term only until the earlier of the issuance of the next report of the Boards of Trustees or the date on which a successor takes office.

Conference Agreement

The conference agreement follows the Senate amendment.

6. Continuation of disability benefits during appeal

Present Law

A disability insurance beneficiary who is determined to be no longer disabled may appeal the determination sequentially through three appellate levels within the Social Security Administration (SSA): a reconsideration, usually conducted by the State Disability Determination Service that rendered the initial unfavorable determination; a hearing before an SSA Administrative Law Judge (ALJ); and a review by a member of SSA's Appeals Council.

The beneficiary has the option of having his or her benefits continued through the hearing stage of appeal. If the earlier unfavorable determinations are upheld by the ALJ, the benefits are subject to recovery by the agency. (If an appeal is determined to be in good faith, benefit repayment may be considered for waiver.) Medicare eligibility is also continued, but medicare benefits are not subject to recovery.

The Omnibus Budget Reconciliation Act of 1987 extended this provision for one year. The Act authorized the payment of interim benefits to persons in the process of appealing termination decisions made before January 1, 1989. Such payments may continue through June 30, 1989 (i.e., through the July 1989 check).

House Bill

The period in which disability benefits may be paid, and medicare eligibility continued, while an appeal is in progress would be extended for one additional year. Upon application by the beneficiary, benefits would be paid while an appeal is in progress with respect to unfavorable determinations made on or before December 31, 1989, and would be continued through June 1990 (i.e., through the July 1990 check).

The provision would be effective with respect to unfavorable decisions made on or before December 31, 1989.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Extend social security exemption for members of certain religious faiths

Present Law

Self-employed workers may claim an exemption from social security coverage if they are members of a religious sect or division that is conscientiously opposed to the acceptance of public or private insurance benefits, if they have waived all benefits under Titles II and XVIII, and if the sect or division has been in existence since December 31, 1950, and provides for the care of its dependent members (e.g., the Amish). Employees who belong to such religious sects, however, are required to participate in social security.

House Bill

The provision would extend the current-law treatment of the self-employed to their employees in cases where both the employee and the employer are members of a qualifying religious sect or division. The optional exemption would apply to both the employer and employee portion of the tax.

The provision would apply to taxable years beginning on or after January 1, 1989.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

8. Blood donor locator service

Present Law

Government agencies may require individuals to furnish social security numbers (SSNs) only for certain specified purposes. States are authorized to require SSNs to administer tax, public assistance, drivers' license and motor vehicle registration laws.

House Bill

States or authorized blood donation facilities (those licensed or registered with the Food and Drug Administration, such as the Red Cross) would be permitted to require donors to furnish SSNs. The Secretary of Health and Human Services (HHS) would be required to establish and operate a Blood Donor Locator Service, under the direction of the Commissioner of Social Security, to be used to obtain and transmit the most recent mailing address of any blood donor whose blood shows that he or she may be carrying the virus for acquired immune deficiency syndrome (AIDS), for the sole purpose of informing the blood donor of the possible need for medical care and treatment.

The provision would permit access to the address information only to State agencies and blood donation facilities meeting requirements for confidentiality and security.

The Secretary of HHS would be required to establish the Blood Donor Locator Service no later than 180 days after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

9. Payment of lump-sum death benefits to legal representatives of widows and widowers who die before receiving payment

Present Law

A lump-sum death payment of \$255 is payable on the death of an insured worker to a surviving spouse who is living with the worker at the time of the worker's death. If there is no such spouse, then the benefit is payable to a surviving spouse who is eligible for benefits as a widow(er), mother, or father at the time of the worker's death. If there is no eligible spouse, the lump-sum death payment is payable to a child of the deceased worker who was eligible to receive benefits on the deceased's earnings record at the time of the worker's death. If the widow(er) dies before making application for the lump-sum payment or before negotiating the benefit check, no lump-sum death benefit is payable.

House Bill

The provision would permit the legal representative of the estate of a deceased widow(er) to claim the lump-sum payment in cases in which the otherwise eligible widow(er) dies before having both received and negotiated such payment. Where the legal representative of the estate is a State or political subdivision of a State, the lump-sum benefit would not be payable.

The provision would be effective with respect to deaths of widow(er)s occurring on or after January 1, 1989.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.